

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

RICHARD JIMENEZ, )  
vs. )  
Plaintiff, )  
UNITED STATES, *et al.*, )  
Defendants. )  
NO. CIV-14-446-HE

## **ORDER**

Plaintiff, a federal prisoner appearing *pro se*, filed this action in federal court in Ohio pursuant to the Federal Tort Claims Act and Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971).<sup>1</sup> He claimed defendants failed to provide him with adequate medical care after he fell from his bunk at the Federal Transfer Center in Oklahoma. The case was transferred to the Western District of Oklahoma due to improper venue in the Northern District of Ohio and referred to Magistrate Judge Shon Erwin for initial proceedings. *See* 28 U.S.C. § 636(b)(1)(B).

On May 13, 2014, the magistrate judge issued an order directing plaintiff, by June 3, 2014, to either pay the \$400.00 filing fee or submit a motion seeking leave to proceed *in forma pauperis* (“*ifp*”) Doc. #11.<sup>2</sup> Plaintiff was advised that failure to comply with the order

<sup>1</sup>*The Report and Recommendation erroneously states that the action was filed pursuant to 42 U.S.C. § 1983.*

<sup>2</sup>The magistrate judge noted that before the action was transferred plaintiff had filed a motion to proceed ifp. However, because that application had not been granted and because the documents supporting plaintiff's application were more than six months old, the magistrate judge directed plaintiff to file another application that reflected his current ability to pay the filing fee. The court clerk was directed to send plaintiff the necessary forms to enable him to comply with the magistrate judge's order.

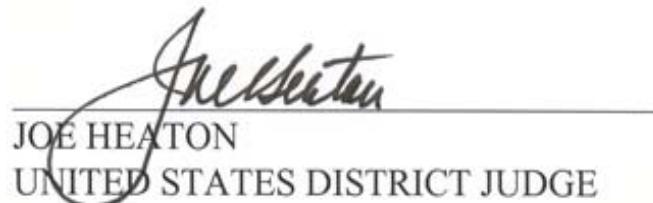
could result in the dismissal of the action without prejudice. When plaintiff did not pay the filing fee or file a motion to proceed *ifp* as directed, the magistrate judge recommended that the action be dismissed without prejudice. Doc. #13.

Plaintiff has not complied with the magistrate judge's May 13, 2014, order or objected to the Report and Recommendation. The docket sheet reflects that he did not receive the May 13 order, as it was returned as undeliverable. Doc. #12. However, as noted by the magistrate judge, the nonreceipt is due to plaintiff's failure to notify the court of his most recent address as required by LCvR5.4(a).

Under these circumstances, the court concurs with the conclusion of the magistrate judge that dismissal is appropriate. Accordingly, the court adopts Magistrate Judge Erwin's Report and Recommendation and dismisses this action without prejudice.

**IT IS SO ORDERED.**

Dated this 25th day of June, 2014.



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JOE HEATON  
UNITED STATES DISTRICT JUDGE